IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 795 OF 2005

Mrs. Gover Neville Cardmaster ...Petitioner

Versus

Neville F. Cardmaster & Anr ...Respondents

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The petitioner and the respondent No.1 are present in person.

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CORAM: B. H. MARLAPALLE, J.

DATED: 18TH MARCH, 2005

P. C.:-

1. The petitioner-wife and respondent-husband are present in person, their advocates are absent.

2. In this petition, the orders passed by the Family Court on 9.2.2005 and 16.2.2005 have been challenged. By the order dated 9.2.2005 the learned Judge of the Family Court had kept the application pending on record for change of advocate but "no objection" from the earlier advocate was not obtained. The new advocate was therefore, directed to get "no objection" from the earlier advocate on the brief. Further, on 16.2.2005, the Family Court has passed the following order :-

"There is ‘No Objection’ on the Vakalatnama of Mrs. Khanna,- the previous Advocate is still on record. The petitioner has filed today a certified copy of the Hon’ble High Court’s order dated 14.1.05 rejecting the writ petition of the Respondent. It is also observed from the Order that the advocate on record in the present case has appeared before the Hon’ble High Court also for the respondent. The respondent has given an undertaking to this Court in her own handwriting that if she leaves the City of Mumbai without permission of the Court can proceed ex-parte. In view of the same the respondent has not remained present and the advocate on record is also not present. It is difficult to accept the statement of advocate Mrs. Khanna that she is now being appointed as an advocate for the respondent. The respondent is very well aware of the undertaking and that the Court wants to proceed accordingly. Hence, this application is rejected."

3. In this petition, notice was issued to the respondent No.1 husband returnable on 28.2.2005 and further proceedings in M.J. petition No. A-961/2002 were stayed till the 1.3.2005. On 1.3.2005, the stay order was continued till the next date. On 4.3.2005 when the petition was circulated before this Court, pursuant to the circulation granted on the earlier date the stay was not in operation and prima facie, it was found that the impugned order dated 16.2.2005 did not call for interference. It was also pointed out by the husband that change of advocate was sought only to delay the final verdict and inspite of sufficient time available, no steps were taken to remove the deficiencies as noted by the Family Court. The petition was therefore, adjourned and when it is taken up for hearing today, the petitioner wife has filed an affidavit pointing out that the Family Court has allowed the petition filed by the husband for divorce by order dated 14.3.2005.

4. The petitioner states that she has applied for Certified Copy and she is likely to receive the same within a week or so. Order granting divorce may be appealable and therefore, nothing further survives in this petition as at present.

5. The petition is disposed of as infructuous.